

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2599

Introduced by Assembly Member Benoit

February 24, 2006

~~An act relating to vehicles.~~ *An act to amend Sections 186.2, 459, 489, and 496 of the Penal Code, and to amend Section 10851 of, and to add Section 13200.1 to, the Vehicle Code, relating to theft.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2599, as amended, Benoit. Motor vehicle theft.

Existing law defines criminal profiteering activity as an act committed for financial gain that can be charged as a specified offense.

This bill would include motor vehicle theft as one of the offenses that is a criminal profiteering activity.

Existing law makes it a crime to enter a residence, as specified, or a motor vehicle, when the doors are locked, with the intent to commit grand or petit larceny or any felony.

This bill would also make it a crime to enter an unlocked motor vehicle with the intent to commit grand or petit larceny or any felony.

Existing law prescribes misdemeanor or felony penalties for grand theft.

This bill would impose felony penalties for grand theft if the person had a prior misdemeanor conviction for an offense involving motor vehicle theft, as specified.

Existing law prescribes misdemeanor penalties for possession of stolen property.

This bill would impose felony penalties for possession of a stolen motor vehicle if the person had a prior misdemeanor conviction for an offense involving motor vehicle theft, as specified.

Existing law prescribes misdemeanor or felony penalties for taking or driving a motor vehicle without the consent of the owner and with the intent to deprive the owner of the motor vehicle.

This bill would impose felony penalties for taking or driving a motor vehicle without the consent of the owner and with the intent to deprive the owner of the motor vehicle, if the person had a prior misdemeanor conviction for an offense involving motor vehicle theft, as specified.

Existing law provides that the court may suspend a persons driver's licence upon conviction of specified offenses.

This bill would provide that the court shall suspend a persons driver's licence for one year if he or she is convicted of an automobile or other specified items for the purpose of criminal profiteering or theft of unlawful taking of a vehicle.

Because this bill would increase the punishment for certain crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law designates the Commissioner of the California Highway Patrol as the Statewide Vehicle Theft Investigation and Apprehension Coordinator with specified duties. Existing law, the Motor Vehicle Theft Prevention Act, specifies certain funding and reporting requirements for purposes of prevention and increased investigation of economic automobile theft, as defined, and requires the California Highway Patrol to establish a program to reduce the incidence of economic auto theft.~~

~~This bill would state the intent of the Legislature to enact legislation targeting the theft of motor vehicles.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 186.2 of the Penal Code is amended to*
2 *read:*

3 186.2. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Criminal profiteering activity” means any act committed
6 or attempted or any threat made for financial gain or advantage,
7 which act or threat may be charged as a crime under any of the
8 following sections:

9 (1) Arson, as defined in Section 451.

10 (2) Bribery, as defined in Sections 67, 67.5, and 68.

11 (3) Child pornography or exploitation, as defined in
12 subdivision (b) of Section 311.2, or Section 311.3 or 311.4,
13 which may be prosecuted as a felony.

14 (4) Felonious assault, as defined in Section 245.

15 (5) Embezzlement, as defined in Sections 424 and 503.

16 (6) Extortion, as defined in Section 518.

17 (7) Forgery, as defined in Section 470.

18 (8) Gambling, as defined in Sections 337a to 337f, inclusive,
19 and Section 337i, except the activities of a person who
20 participates solely as an individual bettor.

21 (9) Kidnapping, as defined in Section 207.

22 (10) Mayhem, as defined in Section 203.

23 (11) Murder, as defined in Section 187.

24 (12) Pimping and pandering, as defined in Section 266.

25 (13) Receiving stolen property, as defined in Section 496.

26 (14) Robbery, as defined in Section 211.

27 (15) Solicitation of crimes, as defined in Section 653f.

28 (16) Grand theft, as defined in Section 487.

29 (17) Trafficking in controlled substances, as defined in
30 Sections 11351, 11352, and 11353 of the Health and Safety
31 Code.

32 (18) Violation of the laws governing corporate securities, as
33 defined in Section 25541 of the Corporations Code.

34 (19) Any of the offenses contained in Chapter 7.5
35 (commencing with Section 311) of Title 9, relating to obscene
36 matter, or in Chapter 7.6 (commencing with Section 313) of Title
37 9, relating to harmful matter that may be prosecuted as a felony.

- 1 (20) Presentation of a false or fraudulent claim, as defined in
2 Section 550.
- 3 (21) False or fraudulent activities, schemes, or artifices, as
4 described in Section 14107 of the Welfare and Institutions Code.
- 5 (22) Money laundering, as defined in Section 186.10.
- 6 (23) Offenses relating to the counterfeit of a registered mark,
7 as specified in Section 350.
- 8 (24) Offenses relating to the unauthorized access to
9 computers, computer systems, and computer data, as specified in
10 Section 502.
- 11 (25) Conspiracy to commit any of the crimes listed above, as
12 defined in Section 182.
- 13 (26) Subdivision (a) of Section 186.22, or a felony subject to
14 enhancement as specified in subdivision (b) of Section 186.22.
- 15 (27) Any offenses related to fraud or theft against the state's
16 beverage container recycling program, including, but not limited
17 to, those offenses specified in this subdivision and those criminal
18 offenses specified in the California Beverage Container
19 Recycling and Litter Reduction Act, commencing at Section
20 14500 of the Public Resources Code.
- 21 (28) Human trafficking, as defined in Section 236.1.
- 22 (29) Theft of personal identifying information, as defined in
23 Section 530.5.
- 24 (30) *Offenses involving the theft of a motor vehicle, as*
25 *specified in Section 10851 of the Vehicle Code.*
- 26 (b) "Pattern of criminal profiteering activity" means engaging
27 in at least two incidents of criminal profiteering, as defined by
28 this act, that meet the following requirements:
- 29 (1) Have the same or a similar purpose, result, principals,
30 victims, or methods of commission, or are otherwise interrelated
31 by distinguishing characteristics.
- 32 (2) Are not isolated events.
- 33 (3) Were committed as a criminal activity of organized crime.
- 34 Acts that would constitute a "pattern of criminal profiteering
35 activity" may not be used by a prosecuting agency to seek the
36 remedies provided by this chapter unless the underlying offense
37 occurred after the effective date of this chapter and the prior act
38 occurred within 10 years, excluding any period of imprisonment,
39 of the commission of the underlying offense. A prior act may not

1 be used by a prosecuting agency to seek remedies provided by
2 this chapter if a prosecution for that act resulted in an acquittal.

3 (c) "Prosecuting agency" means the Attorney General or the
4 district attorney of any county.

5 (d) "Organized crime" means crime that is of a conspiratorial
6 nature and that is either of an organized nature and seeks to
7 supply illegal goods and services such as narcotics, prostitution,
8 loan-sharking, gambling, and pornography, or that, through
9 planning and coordination of individual efforts, seeks to conduct
10 the illegal activities of arson for profit, hijacking, insurance
11 fraud, smuggling, operating vehicle theft rings, fraud against the
12 beverage container recycling program, or systematically
13 encumbering the assets of a business for the purpose of
14 defrauding creditors. "Organized crime" also means crime
15 committed by a criminal street gang, as defined in subdivision (f)
16 of Section 186.22. "Organized crime" also means false or
17 fraudulent activities, schemes, or artifices, as described in
18 Section 14107 of the Welfare and Institutions Code, and the theft
19 of person identifying information, as defined in Section 530.5.

20 (e) "Underlying offense" means an offense enumerated in
21 subdivision (a) for which the defendant is being prosecuted.

22 *SEC. 2. Section 459 of the Penal Code is amended to read:*

23 459. Every person who enters any house, room, apartment,
24 tenement, shop, warehouse, store, mill, barn, stable, outhouse or
25 other building, tent, vessel, as defined in Section 21 of the
26 Harbors and Navigation Code, floating home, as defined in
27 subdivision (d) of Section 18075.55 of the Health and Safety
28 Code, railroad car, locked or sealed cargo container, whether or
29 not mounted on a vehicle, trailer coach, as defined in Section 635
30 of the Vehicle Code, any house car, as defined in Section 362 of
31 the Vehicle Code, inhabited camper, as defined in Section 243 of
32 the Vehicle Code, vehicle as defined by the Vehicle Code, ~~when~~
33 ~~the doors are locked~~, aircraft as defined by Section 21012 of the
34 Public Utilities Code, or mine or any underground portion
35 thereof, with intent to commit grand or petit larceny or any
36 felony is guilty of burglary. As used in this chapter, "inhabited"
37 means currently being used for dwelling purposes, whether
38 occupied or not. A house, trailer, vessel designed for habitation,
39 or portion of a building is currently being used for dwelling
40 purposes if, at the time of the burglary, it was not occupied solely

1 because a natural or other disaster caused the occupants to leave
2 the premises.

3 *SEC. 3. Section 489 of the Penal Code is amended to read:*

4 489. Grand theft is punishable as follows:

5 (a) When the grand theft involves the theft of a firearm, by
6 imprisonment in the state prison for 16 months, 2, or 3 years.

7 (b) *When the grand theft involves the theft of a motor vehicle,*
8 *and the person has a previous misdemeanor conviction for grand*
9 *theft involving a motor vehicle, for a violation of Section 10851*
10 *of the Vehicle Code, or for a violation of Section 496 involving a*
11 *motor vehicle, by imprisonment in the state prison.*

12 (c) In all other cases, by imprisonment in a county jail not
13 exceeding one year or in the state prison.

14 *SEC. 4. Section 496 of the Penal Code is amended to read:*

15 496. (a) Every person who buys or receives any property that
16 has been stolen or that has been obtained in any manner
17 constituting theft or extortion, knowing the property to be so
18 stolen or obtained, or who conceals, sells, withholds, or aids in
19 concealing, selling, or withholding any property from the owner,
20 knowing the property to be so stolen or obtained, shall be
21 punished by imprisonment in a state prison, or in a county jail for
22 not more than one year. However, if the district attorney or the
23 grand jury determines that this action would be in the interests of
24 justice, the district attorney or the grand jury, as the case may be,
25 may, if the value of the property does not exceed four hundred
26 dollars (\$400), specify in the accusatory pleading that the offense
27 shall be a misdemeanor, punishable only by imprisonment in a
28 county jail not exceeding one year.

29 A principal in the actual theft of the property may be convicted
30 pursuant to this section. However, no person may be convicted
31 both pursuant to this section and of the theft of the same
32 property.

33 (b) *Any person who has a previous misdemeanor conviction*
34 *for a violation of subdivision (a) involving a motor vehicle, for a*
35 *violation of Section 10851 of the Vehicle Code, or for grand theft*
36 *involving a motor vehicle shall be punished by imprisonment in*
37 *the state prison upon a subsequent conviction of subdivision (a)*
38 *involving a motor vehicle.*

39 (c) Every swap meet vendor, as defined in Section 21661 of
40 the Business and Professions Code, and every person whose

principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of four hundred dollars (\$400) that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be punished by imprisonment in a state prison, or in a county jail for not more than one year.

Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value of four hundred dollars (\$400) or less that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received had the legal right to sell or deliver it, without making a reasonable inquiry, shall be guilty of a misdemeanor.

~~(e)~~

~~(d)~~ Any person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees.

~~(d)~~

~~(e)~~ Notwithstanding Section 664, any attempt to commit any act prohibited by this section, except an offense specified in the accusatory pleading as a misdemeanor, is punishable by imprisonment in the state prison, or in a county jail for not more than one year.

SEC. 5. Section 10851 of the Vehicle Code is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether

1 with or without intent to steal the vehicle, or any person who is a
2 party or an accessory to or an accomplice in the driving or
3 unauthorized taking or stealing, is guilty of a public offense and,
4 upon conviction thereof, shall be punished by imprisonment in a
5 county jail for not more than one year or in the state prison or by
6 a fine of not more than five thousand dollars (\$5,000), or by both
7 the fine and imprisonment.

8 (b) *Any person who has a previous misdemeanor conviction*
9 *for a violation of subdivision (a), for a violation of Section 496*
10 *involving a motor vehicle, or for grand theft involving a motor*
11 *vehicle shall be punished by imprisonment in the state prison*
12 *upon a subsequent conviction of subdivision (a).*

13 (c) If the vehicle is (1) an ambulance, as defined in subdivision
14 (a) of Section 165, (2) a distinctively marked vehicle of a law
15 enforcement agency or fire department, taken while the
16 ambulance or vehicle is on an emergency call and this fact is
17 known to the person driving or taking, or any person who is party
18 or an accessory to or an accomplice in the driving or
19 unauthorized taking or stealing, or (3) a vehicle which has been
20 modified for the use of a disabled veteran or any other disabled
21 person and which displays a distinguishing license plate or
22 placard issued pursuant to Section 22511.5 or 22511.9 and this
23 fact is known or should reasonably have been known to the
24 person driving or taking, or any person who is party or an
25 accessory in the driving or unauthorized taking or stealing, the
26 offense is a felony punishable by imprisonment in the state
27 prison for two, three, or four years or by a fine of not more than
28 ten thousand dollars (\$10,000), or by both the fine and
29 imprisonment.

30 ~~(e)~~

31 (d) In any prosecution for a violation of subdivision (a) or (b),
32 the consent of the owner of a vehicle to its taking or driving shall
33 not in any case be presumed or implied because of the owner's
34 consent on a previous occasion to the taking or driving of the
35 vehicle by the same or a different person.

36 ~~(d)~~

37 (e) The existence of any fact which makes subdivision (b)
38 applicable shall be alleged in the accusatory pleading, and either
39 admitted by the defendant in open court, or found to be true by
40 the jury trying the issue of guilt or by the court where guilt is

1 established by plea of guilty or nolo contendere or by trial by the
2 court sitting without a jury.

3 (e)

4 (f) Any person who has been convicted of one or more
5 previous felony violations of this section, or felony grand theft of
6 a vehicle in violation of subdivision (d) of Section 487 of the
7 Penal Code, former subdivision (3) of Section 487 of the Penal
8 Code, as that section read prior to being amended by Section 4 of
9 Chapter 1125 of the Statutes of 1993, or Section 487h of the
10 Penal Code, is punishable as set forth in Section 666.5 of the
11 Penal Code. The existence of any fact that would bring a person
12 under Section 666.5 of the Penal Code shall be alleged in the
13 information or indictment and either admitted by the defendant in
14 open court, or found to be true by the jury trying the issue of guilt
15 or by the court where guilt is established by plea of guilty or nolo
16 contendere, or by trial by the court sitting without a jury.

17 (f)

18 (g) This section shall become operative on January 1, 1997.

19 SEC. 6. Section 13200.1 is added to the Vehicle Code, to
20 read:

21 13200.1. Whenever any person licensed under this code is
22 convicted of a violation of subdivision (d) of Section 487 and
23 Section 666.5 of the Penal Code or Section 10851 of this code,
24 the court shall suspend the privilege of the person to operate a
25 motor vehicle for one year.

26 SEC. 7. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the
31 penalty for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition of a
33 crime within the meaning of Section 6 of Article XIII B of the
34 California Constitution.

35 ~~SECTION 1. It is the intent of the Legislature to enact~~
36 ~~legislation targeting the theft of motor vehicles.~~